

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	
)	U.S. EPA Region IX
)	CERCLA Docket No. 2018-12
North Hollywood Operable Unit,)	
San Fernando Valley (Area 1))	
Superfund Site)	
Los Angeles, California)	
)	
Lockheed Martin Corporation,)	
)	
Respondent)	
)	
Proceeding under Section 106(a))	UNILATERAL ADMINISTRATIVE
of the Comprehensive Environmental)	ORDER FOR REMEDIAL DESIGN
Response, Compensation, and Liability)	AND REMEDIAL ACTION
Act, 42 U.S.C. § 9606(a))	
)	
)	

UNILATERAL ADMINISTRATIVE ORDER FOR
REMEDIAL DESIGN AND REMEDIAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order (“Order”) is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. The authority in EPA Delegation 14-14-A was further redelegated by the Regional Administrator of EPA Region IX to the Region IX Superfund Branch Chief, now called Assistant Director, by Regional Delegation R9-1200 TN 2018-01, dated May 9, 2018, and the authority in EPA Delegation 14-14-B was further redelegated to the Region IX Superfund Branch Chief, now called Assistant Director, by Regional Delegation R9-1200 TN 2017-01, dated March 8, 2017.

2. This Order pertains to the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site (the “NHOU” or the “Site”). The requirements imposed upon Respondent by this Order include the obligation to (1) design the Eastern NHOU Wells and the piping infrastructure necessary to convey extracted water to the Burbank Operable Unit (“BOU”) Treatment Plant; (2) construct the Eastern NHOU Wells and the piping infrastructure necessary to convey extracted water to the BOU Treatment Plant; (3) operate the Eastern NHOU Wells and convey all extracted water to the BOU Treatment Plant; (4) treat all water extracted at the Eastern NHOU Wells to meet the applicable or relevant and appropriate requirements for the NHOU2IR, as defined in Section III below, as well as any off-site requirements necessary for the end use ultimately selected by EPA; and (5) provide an end use for all water extracted at the Eastern NHOU Wells. All Work conducted pursuant to this Order shall be conducted consistent with the NHOU2IR. Respondent can achieve compliance with a requirement of this Order if the requirement is fulfilled by an entity not subject to this Order, including the City of Burbank.

3. EPA has notified the State of California (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Lockheed Martin Corporation (“Respondent”) and its successors and assigns. Any change in ownership or control of the Facilities or change in corporate or partnership status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent’s responsibilities under this Order. Nothing in this Order applies to or is binding on the City of Burbank.

5. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order, including contractors hired by the City of Burbank or other entities not subject to this Order, and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide

written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in its appendices, the following definitions shall apply solely for the purposes of this Order:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to conduct the Remedial Design or implement the Remedial Action.

“BOU Treatment Plant” shall mean the water treatment plant, located at 3200 W. Monterey Avenue, Burbank, California, which is owned by the City of Burbank and was constructed pursuant to the Consent Decrees implementing the first interim remedy for the Burbank Operable Unit of the San Fernando Valley Area 1 Superfund Site.

“City of Burbank” shall mean the City of Burbank, California, and any agencies or departments thereof.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Eastern NHOU Wells” shall mean extraction wells NHE-7 and NHE-8, initially included as part of the remedy selected in the 1987 NHOU Record of Decision and subsequently incorporated into the NHOU2IR, and the new wells planned for installation in the vicinity of NHE-7 and NHE-8 pursuant to the 2018 NHOU Explanation of Significant Differences.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“2018 NHOE Explanation of Significant Differences” or “2018 NHOE ESD” shall mean the Explanation of Significant Differences to the 2009 Interim Action Record of Decision signed by EPA Region IX on February 27, 2018.

“Facility” or “Facilities” shall mean the former aerospace manufacturing facilities, owned and operated by Respondent’s predecessor, that were previously located in the NHOE and the BOE, including those located at approximately 4207 Empire Avenue, 10650 Sherman Way, 10720 Sherman Way, and 10756 Sherman Way, Burbank, California.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“LADWP” shall mean the Los Angeles Department of Water and Power.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Pt. 300, and any amendments thereto.

“NHOE2IR” shall mean the second interim remedy for the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site selected in the September 30, 2009 Interim Action Record of Decision and modified by the January 10, 2014 Amendment to the 2009 Interim Action Record of Decision, the June 20, 2016 Memorandum to File, and the February 27, 2018 Explanation of Significant Differences to the 2009 Interim Action Record of Decision.

“Non-Respondent Owner” shall mean any person, other than Respondent, that owns or controls any Affected Property. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.

“Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

“Paragraph” or “¶” shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter:

“Parties” shall mean EPA and Respondent.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the remedial action objectives, as set forth in the NHOU2IR, as defined below.

“Proprietary Controls” shall mean easements or covenants running with the land that: (a) limit land, water, or other resource use and/or provide access rights; and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

“RCRA” shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

“2009 Record of Decision” or “2009 ROD” shall mean the EPA Interim Action Record of Decision for the North Hollywood Operable Unit, signed on September 30, 2009 by the Regional Administrator, EPA Region IX, or his/her delegate, all attachments thereto. The 2009 ROD and modifications to it are attached as Appendix A.

“Remedial Action” or “RA” shall mean the remedial action selected in the NHOU2IR.

“Remedial Design” or “RD” shall mean the detailed plans and specifications for implementation of the Remedial Action selected in the NHOU2IR.

“Respondent” shall mean Lockheed Martin Corporation.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondent’s performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing deliverables submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” or “NHOU” shall mean the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site, which is generally comprised of approximately four square miles of groundwater contaminated with hazardous substances underlying an area of mixed industrial, commercial, and residential land use in the community of North Hollywood, and includes any areas to which and from which such hazardous substance groundwater contamination migrates.

“State” shall mean the State of California.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondent must perform to implement the RA and O&M regarding the Site, which is attached as Appendix B.

“Supervising Contractor” shall mean the principal contractor retained by Respondent to supervise and direct the implementation of the Work under this Order.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous material” under California Health and Safety Code Section 25117; and (5) any “hazardous substance” under California Health and Safety Code Section 25316.

“Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XVII (Record Retention).

IV. FINDINGS OF FACT

7. Based on available information and investigation, EPA has found:

a. The Site is an area of contaminated groundwater in the San Fernando Valley Basin (the “Basin”), which lies beneath the San Fernando Valley in Los Angeles County, California. Beginning in the 1940s, the San Fernando Valley was developed for both residential and industrial uses, and was the location of significant aerospace manufacturing activity.

b. The Basin is an important source of drinking water for the Los Angeles metropolitan area. LADWP produces groundwater for public distribution from seven well fields near or within the NHOU. Over the past ten years, groundwater from LADWP well fields located in the Basin, including in the NHOU, has contributed approximately 15 percent of the City of Los Angeles' municipal water supply.

c. Tests conducted in the early 1980s to determine the presence of certain industrial chemicals in the State's drinking water revealed extensive contamination from volatile organic compounds ("VOCs") in the Basin's groundwater. In 1985, groundwater from twenty-seven of the thirty-five production wells in the NHOU well field exceeded the federal Maximum Contaminant Level ("MCL") for trichloroethylene ("TCE"), and four wells exceeded the MCL for tetrachloroethylene ("PCE").

d. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Area 1 site on the National Priorities List, set forth at 40 C.F.R. Pt. 300, Appx. B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

e. On September 23, 1987, EPA signed a Record of Decision for the remediation of the VOC-contaminated groundwater in the NHOU ("1987 ROD"). The 1987 ROD called for fifteen years of extraction and treatment of VOC-contaminated groundwater in order to contain the VOC plume and remove contaminant mass (the "First Interim Remedy").

f. The First Interim Remedy was constructed to operate in conjunction with the LADWP North Hollywood municipal water treatment and distribution plant. The First Interim Remedy was operated by LADWP under a series of cooperative agreements with EPA, and the treated water was delivered to LADWP for use in its municipal water-supply system.

g. In 1996 and 1997, thirty-seven parties entered into consent decrees with the United States, in which they agreed to (1) reimburse the United States for all NHOU past costs and a proportional share of past Basin-wide costs, and (2) pay future costs to operate and maintain the First Interim Remedy for the remainder of its fifteen-year term.

h. Chromium contamination was detected in the Basin for the first time in 1987. EPA began a chromium monitoring program in the early 1990s, and in 1999 EPA began quarterly monitoring for hexavalent chromium (also referred to as chromium (VI)), the predominant form of chromium in the Basin's groundwater.

i. On September 30, 2009, EPA issued the 2009 ROD for the NHOU, selecting a new interim remedy, which includes the construction of new extraction and monitoring wells, chromium (VI) and 1,4-dioxane treatment, expanded VOC treatment, and the continued provision of the treated water to LADWP for use in its municipal water-supply system.

j. On February 14, 2011, EPA, Respondent, and Honeywell International, Inc. entered into an Administrative Settlement Agreement and Order on Consent for Remedial

Design, in which both respondents agreed to produce a detailed set of plans for implementation of the remedy selected in the 2009 ROD.

k. On January 10, 2014, EPA amended the 2009 ROD, identifying reinjection of the treated water as an allowable end use. On June 20, 2016, EPA issued a Memorandum to the File, concluding, consistent with the 2009 ROD, that additional extraction wells are needed to protect the North Hollywood West Well Field.

l. In October 2017, as EPA was developing an explanation of significant differences to the 2009 ROD, EPA, Respondent, and the City of Burbank discussed the role that would be played by the City of Burbank in implementing the NHOUEIR in the event that water extracted from the Eastern NHOUE Wells was conveyed to the BOU Treatment Plant. The result of that discussion was an agreement between EPA, Respondent, and the City of Burbank that was memorialized in a December 18, 2017 letter from EPA to Respondent and the City of Burbank, which is included as Appendix C to this Order. Assuming that water extracted from the Eastern NHOUE Wells would be conveyed to the BOU Treatment Plant and the City of Burbank would not be the recipient of an administrative order to implement the NHOUEIR, the parties agreed that: (1) the City of Burbank will operate the Eastern NHOUE Wells and treat the water extracted from those wells at the BOU Treatment Plant; (2) Respondent and the City of Burbank will arrange for access to any LADWP or City of Los Angeles property necessary for the City of Burbank to operate and maintain the Eastern NHOUE Wells; (3) Respondent and the City of Burbank will assign between them responsibility for operation and maintenance of the Eastern NHOUE Wells and allocate between them financial responsibility for operation and maintenance of the Eastern NHOUE Wells and BOU Treatment System costs; (4) Respondent will ensure that (a) the BOU Treatment Plant has sufficient capacity to accommodate all water from the Eastern NHOUE Wells and the BOU Superfund remedy; (b) the BOU Treatment Plant is capable of treating all contaminants as required by the relevant drinking water permits; and (c) that an end use is provided for all treated and blended water from the BOU Treatment Plant, as well as that received from the Metropolitan Water District; (5) Respondent and the City of Burbank will cooperate in making any necessary revisions to the City of Burbank's drinking water permit; and (6) Respondent and the City of Burbank will finalize all agreements and permits so as to avoid delays in construction or operation of the NHOUEIR.

m. In February 2018, EPA finalized the 2018 NHOUE ESD, further modifying the NHOUEIR to increase groundwater extraction, expand treatment plant capacity, and transfer some of the extracted groundwater to the BOU Treatment Plant.

n. Since November, 2017, both extraction wells NHE-7 and NHE-8, which capture contamination that was released from the Facilities, have been shut down. The Work is necessary to prevent migration of the contaminant plume in the vicinity of NHE-7 and NHE-8 and protect nearby drinking water production wells.

o. According to the Agency for Toxic Substances and Disease Registry ("ATSDR"), drinking or breathing high levels of TCE may cause nervous system effects, liver

and lung damage, abnormal heartbeat, coma, and possibly death. Drinking small amounts of TCE for long periods may cause liver and kidney damage, impaired immune system function, and impaired fetal development in pregnant women. The ATSDR also considers exposure to very high concentrations of PCE to cause dizziness, headaches, sleepiness, confusion, nausea, difficulty in speaking and walking, unconsciousness, and death. The National Institute for Occupational Safety and Health considers TCE and PCE potential carcinogens.

p. The Department of Health and Human Services, the International Agency for Research on Cancer, and EPA have determined that chromium (VI) compounds are known human carcinogens. In workers, inhalation of chromium (VI) has been shown to cause lung cancer.

q. Lockheed Martin Corporation is a Maryland corporation that is the successor to the former owner and operator of aerospace manufacturing facilities previously located in the NHO and the BO, including the Facilities located at approximately 4207 Empire Avenue, 10650 Sherman Way, 10720 Sherman Way, and 10756 Sherman Way, Burbank, California, from which there have been releases of contaminants such as TCE, PCE, and hexavalent chromium. These contaminants have impacted or threaten to impact groundwater in the NHO, specifically in the vicinity of wells NHE-7 and NHE-8, and present an imminent and substantial endangerment to the public health or welfare or the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

8. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. The former Lockheed Martin Corporation aerospace manufacturing Facilities are “facilities” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent is the successor in interest to the “owner” and/or “operator” of the Facilities at the time of disposal of hazardous substances at the Facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and also includes pollutants or contaminants that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the Facilities as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in the NHOU2IR.

g. Solely for purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy selected in the NHOU2IR and the Work to be performed by Respondent shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

h. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

i. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

9. Based on the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with this Order and any modifications to this Order, including, but not limited to, all appendices and all documents incorporated by reference into this Order.

VII. OPPORTUNITY TO CONFER

10. Within ten days after the Order is signed by the Regional Administrator or his/her delegatee, Respondent may, in writing, request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order.

11. Respondent may appear in person or by an attorney or other representative at the conference. Any such conference shall be held no later than ten days after the conference is requested. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than five days after the conference or within ten days after this Order is signed if a conference is not requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Michael Massey, Office of the Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC 3-1)
San Francisco, CA 94105
(415) 972-3034
massey.michael@epa.gov

VIII. EFFECTIVE DATE

12. This Order shall be effective ten days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or written materials are submitted in accordance with Section VII (Opportunity to Confer). If a conference is requested or written materials are submitted, this Order shall be effective on the later of ten days after the day of the conference, or ten days after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondent, within the ten-day period, that EPA intends to modify the Order. The modified Order shall be effective five days after it is signed by the Regional Administrator or his/her delegatee.

IX. NOTICE OF INTENT TO COMPLY

13. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in ¶ 11.

14. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3). The absence of a response by EPA to the notice required by this Section shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondent.

X. PERFORMANCE OF THE WORK

15. **Compliance with Applicable Law.** Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the NHOU2IR and the SOW.

16. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close

proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

17. Coordination and Supervision.

a. Project Coordinators.

(1) Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondent's Project Coordinator may not be an attorney representing Respondent in this matter and may not act as the Supervising Contractor. Respondent's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(1) EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Manager will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material. EPA designates the following as EPA's Project Manager:

Kelly Manheimer, Superfund Project Manager
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (SFD 7-1)
San Francisco, CA 94105
(415) 972-3290
manheimer.kelly@epa.gov

(2) Respondent's Project Coordinators shall meet with EPA's Project Manager at least monthly.

b. **Supervising Contractor.** Respondent's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

c. **Procedures for Disapproval/Notice to Proceed.**

(1) Respondent shall designate, and notify EPA, within ten days after the Effective Date, of the names, titles, contact information, and qualifications of Respondent's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondent shall, within thirty days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondent may select any coordinator/contractor covered by an authorization to proceed and shall, within twenty-one days, notify EPA of Respondent's selection.

(3) Respondent may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶ 17.c(1) and 17.c(2).

18. **Performance of Work in Accordance with SOW.** Respondent shall: (a) perform the RD and RA; and (b) support EPA's periodic review efforts; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Order or SOW shall be subject to approval by EPA in accordance with ¶ 6.6 (Approval of Deliverables) of the SOW.

19. **Emergencies and Releases.** Respondent shall comply with the emergency and release response and reporting requirements under ¶ 4.3 (Emergency Response and Reporting) of the SOW.

20. **Community Involvement.** If requested by EPA, Respondent shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.

21. **Modification.**

a. EPA may, by written notice from the EPA Project Manager to Respondent, modify, or direct Respondent to modify, the SOW and/or any deliverable developed under the SOW, if such modification is necessary to achieve or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Work set forth in ¶ 1.4 of the SOW. Any other requirements of

this Order may be modified in writing by signature of the Assistant Director of the Superfund Division, EPA Region IX.

b. Respondent may submit written requests to modify the SOW and/or any deliverable developed under the SOW. If EPA approves the request in writing, the modification shall be effective upon the date of such approval or as otherwise specified in the approval. Respondent shall modify the SOW and/or related deliverables in accordance with EPA's approval.

c. No informal advice, guidance, suggestion, or comment by the EPA Project Manager or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

d. Nothing in this Order, the attached SOW, any deliverable required under the SOW, or any approval by EPA constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the SOW or related deliverables will achieve the Performance Standards.

XI. PROPERTY REQUIREMENTS

22. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondent and by EPA, providing that such Non-Respondent Owner: (i) provide EPA, Respondent, and the City of Burbank, and the representatives, contractors, and subcontractors of each, with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in ¶ 22.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 22.b (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;

- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 44 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XVI (Access to Information);
- (9) Assessing Respondent's compliance with the Order;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any Institutional Controls regarding the Affected Property.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) The primary governmental control in place to prevent the public's exposure to contaminated groundwater is the 1979 Final Judgment in the Superior Court of California, County of Los Angeles, (Superior Court Case No. 650079) in the case titled *City of Los Angeles vs. City of San Fernando, et al.* The final judgment created the entity known as "Watermaster" with full authority to administer the adjudication of water rights, under the auspices of the Superior Court. Under the final judgment, only the cities of Los Angeles, Burbank, and Glendale are permitted to extract groundwater from the Basin. Each of these municipalities administers a public drinking water system, which is regulated and subject to permits issued by the Regional Water Quality Control Board, Division of Drinking Water. These drinking water regulatory controls and the Watermaster's authority to regulate and allocate water resources ensure centralized control over area groundwater and its use as a drinking water source.

23. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If Respondent is unable to

accomplish what is required through “best efforts” in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. EPA reserves the right to pursue cost recovery regarding all costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid.

24. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

XII. FINANCIAL ASSURANCE

25. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$8.5 million (“Estimated Cost of the Work”). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Assistant Director of the Superfund Division, EPA Region IX, advises the trustee in writing that: (i) payments are necessary to fulfill the Respondent’s obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with ¶ 31 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 31 (Access to Financial Assurance);

d. A demonstration by Respondent that it meets the relevant financial test criteria of ¶ 28; or

e. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of ¶ 28.

26. **Standby Trust.** If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 25.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to ¶ 31 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 27. Until the standby trust fund is funded pursuant to ¶ 31 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

27. Within thirty days after the Effective Date, Respondent shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with ¶ 25 for EPA’s review. Within sixty days after the Effective Date, or thirty days after EPA’s approval of the form and substance of Respondent’s financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA’s Project Manager.

28. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under ¶ 25.d or 25.e, it must, within thirty days of the Effective Date:

b. Demonstrate that:

(1) Respondent or the affected guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The Respondent or affected guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the Respondent or affected guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

29. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within thirty days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondent of such determination. Respondent shall, within thirty days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance

mechanism that satisfies the requirements of this Section. Respondent shall follow the procedures of ¶ 32 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

30. If Respondent provides financial assurance by means of a demonstration or guarantee under ¶ 25.d or 25.e, it must also:

- a. Annually resubmit the documents described in ¶ 28.b within ninety days after the close of Respondent's or the affected guarantor's fiscal year;
- b. Notify EPA within thirty days after Respondent or the affected guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. Provide to EPA, within thirty days of EPA's request, reports of the financial condition of Respondent or the affected guarantor in addition to those specified in ¶ 28.b; EPA may make such a request at any time based on a belief that Respondent or the affected guarantor may no longer meet the financial test requirements of this Section.

31. Access to Financial Assurance.

a. If EPA determines that Respondent (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider regarding the Respondent's failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the ten-day period specified in this Paragraph, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

32. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondent may submit, on any anniversary of the Effective Date or following Respondent's request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in ¶ 17, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of §§ 25 and 26 (Standby Trust). EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change. Respondent may reduce the amount or change the form or terms of the financial assurance only in accordance with EPA's approval. Within thirty days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to the EPA individual(s) referenced in ¶ 17 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

33. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

XIII. INSURANCE

34. Not later than fifteen days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after the Notice of Work Completion pursuant to ¶ 4.5 of the SOW, commercial general liability insurance with limits of liability of \$1 million per occurrence, and automobile insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificate and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Site name and the EPA docket number for this action.

XIV. DELAY IN PERFORMANCE

35. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Manager within forty-eight hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven days after notifying EPA by telephone and email, Respondent shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

36. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of ¶ 35 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

XV. PAYMENT OF RESPONSE COSTS

37. Respondent shall pay all Response Costs incurred by EPA regarding this Order pursuant to the CERCLA Settlement Agreement for Recovery of Response Costs, EPA Region IX CERCLA Docket No. 2018-13.

XVI. ACCESS TO INFORMATION

38. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

39. Privileged and Protected Claims.

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with ¶ 39.b, and except as provided in ¶ 39.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

40. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XVII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Pt. 2, Subpt. B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of CERCLA § 104(e)(7) or 40 C.F.R. Pt. 2, Subpt. B, the public may be given access to such Records without further notice to Respondent.

XVII. RECORD RETENTION

41. During the pendency of this Order and for a minimum of ten years after EPA provides Notice of Work Completion under ¶ 4.5 of the SOW, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, as well as all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractor and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

42. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least ninety days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in ¶ 39, Respondent shall deliver any such Records to EPA or the State.

43. Within ten days after the Effective Date, Respondent shall submit a written certification to EPA's Project Manager that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. If Respondent is unable to so certify, it shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XVIII. ENFORCEMENT/WORK TAKEOVER

44. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to \$53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C § 9606. In addition, nothing in this Order shall limit EPA's authority under Section XII (Financial Assurance). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XIX. RESERVATIONS OF RIGHTS

45. Nothing in this Order limits the rights and authorities of EPA and the United States:

- a. To take, direct, or order all actions necessary, including to seek a court order, to protect public health, welfare, or the environment or to respond to an actual or threatened release of Waste Material on, at, or from the Site;
- b. To select further response actions for the Site in accordance with CERCLA and the NCP;
- c. To seek legal or equitable relief to enforce the terms of this Order;

d. To take other legal or equitable action as they deem appropriate and necessary, or to require Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law;

e. To bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any costs incurred by EPA or the United States regarding this Order or the Site;

f. Regarding access to, and to require land, water, or other resource use restrictions and/or Institutional Controls regarding the Site under CERCLA, RCRA, or other applicable statutes and regulations; or

g. To obtain information and perform inspections in accordance with CERCLA, RCRA, and any other applicable statutes or regulations.

XX. OTHER CLAIMS

46. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

47. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

48. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or C.F.R. § 300.700(d).

49. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. ADMINISTRATIVE RECORD

50. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order, including, but not limited to, the documents upon which EPA based the selection of the Remedial Action selected in the NHOU2IR. EPA will make the administrative record available for review by appointment on weekdays between the hours of 8:00 a.m. and 5:00 p.m. at the EPA Superfund Records Center, located at 75 Hawthorne Street, San Francisco, CA 94105. Persons may request an appointment to review the administrative record by contacting Elaine Chan at (415) 972-3128 or chan.elaine@epa.gov.

XXII. APPENDICES

51. The following appendices are attached to and incorporated into this Order:

“Appendix A” is the NHOU2IR, which includes the September 30, 2009 Interim Action Record of Decision; the January 10, 2014 Amendment to the 2009 Interim Action Record of Decision; the June 20, 2016 Memorandum to File; and the February 27, 2018 Explanation of Significant Differences to the 2009 Interim Action Record of Decision.


“Appendix B” is the SOW.

“Appendix C” is EPA’s December 18, 2017 letter to Lockheed and the City of Burbank.

XXIII. SEVERABILITY

52. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court’s order.

It is so ORDERED.

BY: 
Dana Barton, Assistant Director
Superfund Division, EPA Region IX
U.S. Environmental Protection Agency

DATE: June 8, 2018